

tion of individuals. The creditors of these several capacities are as distinct as the estates so held, in respect of which the credit may be presumed to have been given: and the property of each is applied first to the satisfaction of the creditors of each; because a different course would be, in effect, to apply the property of one man to the payment of the debts of another. Where a partnership exists nothing can be said properly to belong to each member of it, but his dividend of the surplus after all the partnership debts are paid; so, on the other hand, that alone can be considered as properly the separate estate of an individual which remains, after all his separate debts have been paid. Each of those capacities of the same person is an implied surety for the other; or, in other words, partners are mutually sureties to the creditors for the share of each other; *Ex parte Watson*, 4 *Mad.* 487; but then it would be unequal and unjust to extend this suretyship, or implied liability beyond the surplus, or the clear estate belonging to each capacity; because the creditors of the one capacity hold it directly bound, and those of the other have only an eventual and secondary claim upon the same capacity after those to whom it was directly bound have been fully satisfied. *Ex parte Elton*, 3 *Ves.* 240; *Gray v. Chiswell*, 9 *Ves.* 118; *Collyer Partn.* 337.

But as the assets now to be administered are the proceeds of the separate estate of the late Thomas Tongue, it is clear, that all
357 *these claims now made against them, which were debts due from the several firms of Tongue & McPherson, and from T. T. McPherson & Co. of which the late Thomas Tongue was a partner, must be postponed in favor of the claims due from the late Thomas Tongue in his separate capacity. It is alleged, that this separate estate will be wholly insufficient to pay the debts due from the late Thomas Tongue alone; if so, then this postponement will amount to a total rejection of those claims against the several partnerships, as there will be no surplus of this separate estate applicable to them. This direction comprehends claim No. 127, 128, 129, 130, 131, 132, 136 and 143, as to all which the auditor's objections are deemed valid.

It has been urged, as regards claim No. 127, that although it was, in truth, originally only a claim against the firm of Tongue & McPherson; yet, that this intestate had, in his life-time, assumed upon himself the payment of it; and had thus made it his own separate debt. It is true, that any one member of a partnership may, by promise or contract, take upon himself the payment of a partnership debt; or the partnership may, in like manner, bind itself to pay a separate debt of any one of its members. But, in this instance, there is no sufficient evidence of any such promise or contract, whereby the late Thomas Tongue had made himself separately liable to pay this debt, due from the firm of Tongue &